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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation in East Timor

Report of the Secretary-General

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Introduction

1. At its forty-ninth session the Commission on Human Rights adopted resolution 1993/97, entitled "Situation in East Timor", in which, inter alia, it urged the Government of Indonesia to invite the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to visit East Timor and to facilitate the discharge of their mandates (para. 9), and decided to consider the situation in East Timor at its fiftieth session on the basis of the reports of the Special Rapporteurs and Working Groups and that of the Secretary-General, which would include an analytical compilation of all information received from, among others, Governments and intergovernmental and non-governmental organizations (para. 12).

2. On 26 August 1993 the Secretary-General transmitted the aforementioned resolution to the Government of Indonesia, requesting it to inform him of the steps it envisaged taking in implementing the relevant provisions of the resolution. To date no reply has been received from the Government.

3. The present report has been prepared in compliance with the request made to the Secretary-General contained in the above-mentioned resolution. It contains an update on the good offices activities of the Secretary-General and information on actions taken by thematic Special Rapporteurs and Working Groups of the Commission on Human Rights whose mandates have a bearing on the situation in East Timor. In addition, the report has three annexes containing information received from the Government of Indonesia, the Government of Portugal, and from non-governmental sources, respectively.

4. The attention of the Commission on Human Rights is also drawn to the note by the Secretariat on the situation in East Timor, dated 26 July 1993, which was placed before the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-fifth session (E/CN.4/Sub.2/1993/14), and to the progress report of the Secretary-General on the Question of East Timor, dated 20 September 1993, submitted to the General Assembly at its forty-eighth session (A/48/418).

I. UPDATE ON THE GOOD OFFICES ACTIVITIES OF THE SECRETARY-GENERAL CONCERNING THE QUESTION OF EAST TIMOR

5. Since the last report to the Commission, the dialogue between Indonesia and Portugal under the auspices of the Secretary-General has continued. The Secretary-General held two rounds of talks with the Foreign Ministers of the two countries, the first on 21 April 1993 in Rome, and the second on 17 September 1993 in New York. In the same context, the Secretary-General's Senior Political Adviser, Mr. Alvaro de Soto, has held a number of meetings with the Permanent Representatives of the two sides in New York. In addition, Mr. de Soto and other United Nations officials have held consultations with representatives of various East Timorese political organizations with a view to taking their opinion into account. The Secretary-General plans to hold another round of meetings with the two Foreign Ministers on 6 May 1994, in Geneva.

6. Given the differences between the two Governments regarding the status of East Timor, the talks have focused up to now on a search for possible confidence-building measures that could be undertaken by Indonesia and Portugal with a view to creating a more conducive atmosphere for a discussion at a later stage of the core issues concerning the political future of East Timor.

7. As was reported by the Secretary-General to the General Assembly last September (A/48/418), the last round of ministerial talks produced a number of points of agreement, contained in a statement issued by the Spokesman for the Secretary-General on 17 September 1993 (SG/SM/5095), on which the Secretary-General hopes to build and make progress in the months ahead. _Inter alia_, the Ministers concurred at the 17 September meeting on the importance of the promotion of respect for human rights in all their indivisible aspects (civil, political, economic, social and cultural) and fundamental freedoms in East Timor, and on the need to create a favourable and non-confrontational atmosphere in order to allow effective progress towards a settlement of the question. They also reaffirmed the importance of the implementation of the recommendations contained in the consensus statement of the Chairman of the Commission on Human Rights of 4 March 1992, and the need for further facilitating access to East Timor, _inter alia_, by United Nations and humanitarian and human rights organizations. In addition, they agreed to continue to promote a balanced exchange of visits by journalists and personalities from their respective countries. The Secretary-General for his part reiterated his intention to continue to follow closely the human rights situation in East Timor in the spirit of the 1992 consensus statement issued by the Chairman of the Commission on Human Rights. The Ministers noted the Secretary-General's intention to carry out contacts as he deemed useful in his efforts to assist in the solution of the question.

8. In order to take maximum advantage of this modest first step and spur the negotiating process, the Secretary-General will dispatch a representative to Portugal, Indonesia and East Timor, among other places, to consult, during a period of approximately two weeks beginning on 13 January 1994, with the two Governments concerned, and to maintain contacts with various trends of political opinion among the East Timorese.

9. In April 1993, the Secretary-General dispatched Mr. S. Amos Wako, the Attorney-General of Kenya, as his Personal Envoy on a second visit to Indonesia and East Timor. The purpose of Mr. Wako's visit was to conduct a follow-up of the implementation of the recommendations which he had submitted to the Secretary-General subsequent to his first visit in February 1992 in connection with the tragic incident which took place at the Santa Cruz cemetery in Dili on 12 November 1991. He was also charged by the Secretary-General to provide him with an overall confidential assessment of the human rights situation in East Timor.

10. Mr. Wako's visit took place from 3 to 8 April 1993, following which he reported to the Secretary-General on his findings and submitted his recommendations to him on how the human rights situation in East Timor could be improved. In addition to holding extensive discussions with the Indonesian authorities at the central government and local levels, Mr. Wako was able to meet with a number of East Timorese, including the Bishop of Dili, and various individuals who were either in detention or had been released from detention. Among them were Jose "Xanana" Gusmao, the detained leader of the armed wing of the Frente Revolucionaria de Timor Leste Independente (FRETILIN), with whom Mr. Wako met in complete privacy, and a number of young East Timorese convicted for their alleged part in organizing the November 1991 demonstrations. He also consulted several human rights activists and representatives of non-governmental organizations.

11. The Secretary-General notified the Government of Indonesia as well as the Government of Portugal on the substance of the Personal Envoy's conclusions and recommendations. The Indonesian Government has since provided the Secretary-General with its reaction to Mr. Wako's conclusions and recommendations, providing clarifications on those aspects which in its view lacked in accuracy. In addition, the Government has kept the Secretary-General informed on new developments regarding persons missing after the 12 November 1991 shooting of demonstrators in Dili. By the Government's reckoning, the number of persons unaccounted for from that incident now stands at 56.

12. The fate and the conditions of detention of Mr. "Xanana" Gusmao has been a matter of some international concern. The Secretary-General continues to follow Mr. Gusmao's situation closely. In addition to the meeting which his Personal Envoy had with Mr. Gusmao in April 1993, an observer from the United Nations Secretariat attended the final stages of Mr. Gusmao's trial in May 1993. Mr. Gusmao was found guilty of committing an act to overthrow the Government, rebellion against the Government, conspiracy in an act to overthrow the Government, and the illegal possession of firearms, and was sentenced to life imprisonment on 21 May 1993. In August 1993, that sentence was reduced to 20 years by President Suharto. Mr. Gusmao is now serving his term in a prison in Jakarta.

II. ACTIONS TAKEN BY SPECIAL RAPPORTEURS AND WORKING GROUPS OF THE COMMISSION ON HUMAN RIGHTS CONCERNING EAST TIMOR

A. Action taken by the Special Rapporteur on the question of torture

13. Information regarding the action taken by the Special Rapporteur on the question of torture with regard to East Timor is described in detail in chapter II of the report of the Special Rapporteur to the Commission (see E/CN.4/1994/31, paras. 325 to 343).

14. During 1993 the Special Rapporteur sent four urgent appeals to the Government on behalf of 54 East Timorese detainees, with regard to whom fears were expressed that they might be subjected to torture while in detention. With regard to one case the Government replied that the person in question had never been arrested, detained, or subjected to any harassment.

B. Action taken by the Special Rapporteur on extrajudicial, summary or arbitrary executions

15. Information regarding the action taken by the Special Rapporteur on extrajudicial, summary or arbitrary executions with regard to East Timor is described in detail in chapter IV of the report of the Special Rapporteur to the Commission (see E/CN.4/1994/7, paras. 343-356).

16. According to information received by the Special Rapporteur during the period under consideration, a summary of which had been transmitted to the Government of Indonesia, "East Timor continued to be particularly affected by violations of the right to life perpetrated by the Indonesian security forces. At least 40 persons were said to have been extrajudicially executed by members of the security forces in 1992." It was further reported to the Special Rapporteur that "the whereabouts of more than 200 persons who allegedly disappeared after the killing of more than 50 persons on 12 November 1991 at Santa Cruz were reportedly not known at the end of 1992. Many of them were feared to have been killed and buried in anonymous graves outside Dili or thrown into the sea." According to several reports submitted to the Special Rapporteur, "the perpetrators of human rights violations enjoyed virtual impunity. With very few exceptions, those responsible for unlawful killings or disappearances were not prosecuted or convicted. None of the 10 members of the security forces tried before a military tribunal in connection with the November 1991 killings at Santa Cruz was charged with murder; all reportedly received only light sentences for disciplinary offences. The establishment, in August 1992, of a human rights committee by some members of the Dewan Perwakilan Rakyat and the announcement, in January 1993, by President Suharto of plans to establish an independent national human rights commission in the near future were reported as positive steps towards increased protection of human rights." However, at the time of the preparation of the present report, the Special Rapporteur had not received any detailed information about the working of these institutions.

C. Action taken by the Working Group on Arbitrary Detention

17. Information regarding the action taken by the Working Group on Arbitrary Detention with regard to East Timor is described in annex II of its report to the Commission (see E/CN.4/1994/27, annex II, Decision No. 36/1993). Since the mandate of the Working Group is to investigate cases of detention imposed arbitrarily, the Working Group could examine the situation in East Timor only in the context of individual cases of detention of East Timorese persons which were submitted to it. It did so regarding the case of Fernando de Araujo, an East Timorese arrested in Bali who was accused, and convicted, of masterminding a demonstration in Jakarta to protest against the killings of demonstrators by Indonesian troops on 12 November 1991 at the Santa Cruz cemetery in Dili, East Timor. Mr. Araujo was sentenced to nine years' imprisonment. The Working Group decided that his arrest and continued detention upon conviction were arbitrary.

18. In addition to that decision, the Chairman of the Working Group addressed an urgent appeal to the Government on Indonesia on 9 March 1993 concerning the case of an East Timorese named Saturnino da Costa Belo, from Dili, who was serving a prison term of nine years for his involvement in the demonstration which took place at the Santa Cruz cemetery in Dili on 12 November 1991. The urgent appeal was prompted by an incident which occurred on 4 March 1993 when Mr. da Costa Balo appeared at the trial of Xanana Gusmao, as a witness for the prosecution. He reportedly shouted pro-Fretilin slogans, causing the hearing to be interrupted. When the hearing resumed one hour later, an army doctor reportedly testified later that da Costa Balo was not fit to continue, and since then no news were received about his fate.

19. A reply was received from the Indonesian Government affirming that da Costa Bàlo was not forced to appear as a witness for the prosecution in Gusmao's trial, and assuring the Working Group that his life was in no danger whatsoever, that he was not being ill-treated in any way and that he had been taken back to Baucan prison where he continued to serve his sentence.

D. Action taken by the Working Group on Enforced or Involuntary Disappearances

20. Information regarding the action taken by the Working Group on Enforced or Involuntary Disappearances with regard to East Timor is described in detail in chapter II of the Working Group's report to the Commission (see E/CN.4/1994/26, paras. 260, 261 and 269). During 1993 the Working Group transmitted to the Government of Indonesia, under the urgent action procedure, 17 newly reported cases of disappearances concerning persons who had reportedly been arrested in Dili, East Timor, in 1992, without warrant and who were said to be held incommunicado. Reportedly, security officials had denied that the persons concerned had been detained.

21. While the Government of Indonesia, in a letter dated 5 November 1993, provided information on 20 cases of disappearances previously transmitted by the Working Group, it did not reply on the above-mentioned 17 cases.

Annex I

INFORMATION PROVIDED BY THE INDONESIAN GOVERNMENT

A statement was made by the observer for Indonesia at the forty-fifth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, under item 6 of the agenda (see E/CN.4/Sub.2/1993/SR.15/Add.1).

By letter dated 21 September 1993 the Chargé d'affaires a.i. of the Permanent Mission of the Republic of Indonesia to the United Nations Office at Geneva transmitted to the Assistant Secretary-General for Human Rights a letter dated 13 September 1993 addressed to the Secretary-General by the Indonesian Minister for Foreign Affairs, reading as follows:

"Following my letter of September 2, 1992 regarding the number of persons unaccounted for after the November 12, 1991 incident, I now have the honour to further inform Your Excellency that the Armed Forces Commander has submitted a second report to the President of Indonesia on the result of the search for persons missing after that tragic incident.

"As I stated in my previous letter of September 2, 1992 the number of missing persons stood at 66. Since that time, the Government of Indonesia has conducted an even more intensive search for these missing persons utilizing not only the security apparatus but also the personnel of the Provincial Administration, civic and social institutions and community leaders as well as the people in general. The names of those reported as missing were also disseminated among the people in the hope that feedback on their whereabouts would be generated. We also asked those who had been earlier reported as missing but who had returned to their homes to help in the search for their missing companions. This intensive effort has yielded the following results.

"On November 5, 1992 one of the persons considered missing, Alfonso Mario, was found at his house. He had been identified as one of those who instigated the demonstrations on the day of the Dili incident. After he was interviewed, Alfonso Mario was released and he later rejoined his family.

"On May 14, 1993, another person who had been involved in the incident and had been considered missing, Januario da Conceiçao, gave himself up to the authorities and after some questioning he was released and he returned home on 24 May 1993.

"It should be noted that in July 1992, four bodies were found outside Dili but it could not be ascertained if these were the remains of persons considered missing after the Dili incident.

"It should also be noted that one of the instigators of the November 12 demonstration, Constantio Pinto, has fled the country.

"On 23 of June 1993 four East Timorese youths sought asylum in the Embassy of Finland and another three in the Swedish Embassy in Jakarta. They finally left the Embassies after their requests for asylum were refused. After some checking, strong indications were found that two of them, Profirio da Costa de Oliveira and Clementino Faria, were part of the group of persons hitherto unaccounted for. Thus, taking into account the results of this latest search effort, it may now be assumed that there remain only 57 persons unaccounted for.

"Based on the information so far obtained, it is clear that the Armed Forces, the Provincial Administration, the Indonesian National Red Cross, community and church leaders including the Bishop of Dili, as well as the people in general, have conducted a thorough search for the persons unaccounted for after the Dili incident. It is therefore reasonable to assume that a further search would not yield additional information. It is possible that those still considered missing have fled to the woods, or gone into hiding or are unwilling to report their whereabouts. They may even have fled the country.

"Should there be any more of those persons considered missing who would turn up in the future, it is the policy of the Government of Indonesia that they will be treated in the same manner in which Alfonso Mario and Januario da Conceiçao were treated. Their cases would be expeditiously and humanely processed and then they would be sent back to their homes and families as soon as feasible.

"We believe, however, that the Government of Indonesia has done all that is possible to locate those persons unaccounted for after the tragic Dili incident.

"I do hope, Mr. Secretary-General, that this further information will be helpful to you in your continuing efforts to find a solution to the East Timor question."

By letter dated 18 October 1993 the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva transmitted to the Chief of the Special Procedures Branch of the Centre for Human Rights a list of East Timorese detainees who were granted clemency and remission:

LIST OF EAST TIMORESE DETAINEES WHO WERE GRANTED
CLEMENCY AND REMISSION

No.	NAME	SENTENCED TO	COMMUTED TO
1.	Jose Alexandre Xanana GUSMAO	life imprisonment	20 years
2.	Bonifacio PEREIRA	6 years' imprisonment	4 years
3.	Carlos dos Santos LEMOS	8 years' imprisonment	6 years

No.	NAME	SENTENCED TO	REMISSION OF
1.	Luis Maria DA SILVA	10 years	6 months**
2.	Felis Mina DOS SANTOS	5 years	2 months*
3.	Amaro de ARAUJO	3 years 10 months	2 months*
4.	Bonafacio Magno PEREIRA	6 years	2 months
5.	Carlos dos Santos LEMOS	8 years	2 months
6.	Alfonso RANGEL	5 years	1 month*
7.	Albino LOURDES	17 years	6 months*
8.	Marito alias Mario MICILANDORES	17 years	6 months*

* Remission will still be given every year to each detainee.
** Released on 17 August 1993.

By letter dated 1 December 1993 the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva transmitted to the Assistant Secretary-General for Human Rights a letter, dated 29 November 1993, which the Indonesian Minister for Foreign Affairs had addressed to the Secretary-General of the United Nations, reading as follows:

> "Pursuant to my letter of 1 September 1993 regarding the number of people remaining unaccounted for after the incident of 12 November 1991 in Dili, East Timor, I have the honour to further inform Your Excellency that on 15 September 1993, one Antoni Lay, also known as Tonie, 29, previously listed as unaccounted for, reported to the authorities in East Timor.
>
> "An employee of CV Ainaro Karya, Ainaro Atas Village, RT-1, Ainaro Sub-District, Antoni Lay reported of his own free will after learning that persons previously unaccounted for but who had reported to the authorities were treated well and returned promptly to their families.
>
> "With this report, the number of those unaccounted for is now down to 56.
>
> "I do hope, Mr. Secretary-General, that this further information will be helpful to you in your continuing efforts to find a solution to the East Timor question."

Annex II

INFORMATION PROVIDED BY THE GOVERNMENT OF PORTUGAL

On 28 July 1993 the Chargé d'affaires a.i. of the Permanent Mission of Portugal to the United Nations addressed a letter to the Secretary-General which was circulated to the General Assembly as documemt A/48/282.

By note verbale dated 13 August 1993 the Permanent Mission of Portugal to the United Nations Office at Geneva transmitted to the Centre for Human Rights the text of a statement made by the observer for Portugal at the forty-fifth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, under item 6 of the agenda (see E/CN.4/Sub.2/1993/SR.15/Add.1), as well as an aide mémoire dated 2 August 1993 on the situation in East Timor. The text of the aide mémoire reads as follows:

> "Situation in East Timor
>
> 1. In adopting resolution 1992/20, in August 1992, the Sub-Commission for the Prevention of Discrimination and Protection of Minorities decided (para. 9) to review the situation in East Timor at its forty-fifth session.
>
> 2. Resolution 1992/20 was adopted following the approval, on 4 March 1992, by the Commission on Human Rights of a consensus statement by its presidency regarding the human rights situation in the territory especially in the aftermath of the brutal killing of a large number of East Timorese in Dili, on 12 November 1991, by Indonesian troops. It left no doubt on the Sub-Commission's negative assessment of the way the Indonesian authorities were complying with the provisions of a consensus statement (to which) they had subscribed, as a member of the United Nations Commission on Human Rights.
>
> The Sub-Commission expressed its utmost concern at reports of continuing widespread human rights violations in East Timor and urged the Indonesian authorities to honour their commitments by carrying out the provisions of the consensus statement and the recommendations of the Special Rapporteur on the question of torture, following his visit to Indonesia and East Timor, in November 1991.
>
> 3. The disappointment at Indonesia's lack of effective compliance with what it had negotiated and agreed to within the Commission also clearly reflected at the latter's forty-ninth session leading to the adoption, by 22 votes in favour, 12 against and 15 abstentions, of resolution 1993/97 on the situation in East Timor. It was the first to be adopted in 10 years concerning this subject, in a clear demonstration of the international community's growing concern with the gravity of the human rights situation prevailing in the territory, as well as with the lack of appropriate action on the part of Indonesia to improve it.

4. In fact, resolution 1993/97 retained most of the provisions included in the previous consensus statement of the Commission. It is noteworthy to pass briefly in review the main points contemplated in the resolution and to compare it with the reality in the territory, having in mind Indonesia's assertions that it was abiding by most of them:

4.1 Resolution 1993/97 affirmed that the Commission on Human Rights was gravely concerned at continuing allegations of serious human rights violations in East Timor. Reports thereon were submitted to it by the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances. Indonesia had been requested by the Commission, in March 1992, to take action in order to improve the human rights observance in the territory.

But reports coming from different sources converge in denouncing that the situation has known no significant improvement, in spite of all the pledges made by the Indonesian authorities. Extrajudicial executions (40 in 1992, in East Timor, according to Amnesty International), "disappearances", routine torture and ill-treatment of political prisoners and arbitrary arrests have continued unabated. Amnesty International states that "there has been no fundamental change in the Government's repressive posture toward political dissidents, and that basic human rights continue to be violated in the name of national security, stability and order".

Monsignor Belo, the apostolic administrator of Dili, said to the New York Times, as recently as 24 April 1993, that "people are living in fear in East Timor", adding that they lack the freedom to speak, to walk to where they want and to have different opinions. He charged the occupation forces with having executed several people hours after they were captured alive at the Santa Cruz cemetary, on 12 November 1991. He said that all the political prisoners were tortured in the Dili prisons (often tied up and dunked in tubs of water until they nearly drowned, burned with cigarettes and subjected to mock executions, he added).

In an ominous sign for the days to come, General Theo Syafei, a top military official responsible for the occupied territory, threatened, during a speech delivered on 21 July 1993, that the Indonesian armed forces will not hesitate in "crushing" any "separatist" activity in East Timor. This is the same General Syafei who had declared that were he in charge of the military commandment in Dili on 12 November 1991, the number of casualties would then certainly have been much higher.

4.2 No further investigative action whatsoever was reported into the circumstances surrounding the 12 November 1991 massive killing of civilians by the Indonesian security forces, as well as into the latters' actions in this connection, including the identification of all those responsible for them. The final report of the commission of inquiry set up by the Indonesian Government was never rendered public.

4.3 More than one and a half years after the Santa Cruz tragedy, the lack of information about the number of people actually killed persists. No names were ever released and the mourning families are still to be informed of their burial places.

4.4 The Working Group on Enforced or Involuntary Disappearances transmitted to the Indonesian Government, in November 1992, a list with the names of 207 persons believed to have "disappeared" at the time of the Santa Cruz killing. The Indonesian authorities (who put the official figure of the people still unaccounted for at 66) not only failed to provide, so far, any information about their fate but also had to admit that only two of the sixty-six still officially missing had been found, in spite of all the efforts made. This was publicly stated, on 12 July 1993, by the Indonesian armed forces spokesman, General Syarwan Hamid.

4.5 Resolution 1993/97 referred also to the 13 East Timorese civilians sentenced in the aftermath of the 12 November shooting to heavy prison terms (including a life imprisonment), without having been indicted for violent activities. Similarly to the 1992 consensus statement, the Commission called upon the Indonesian Government to release them without delay, regretting, on the other hand, the blatant disparity existing between these severe sentences and the shootings. No action in this regard was reportedly taken by the Indonesian authorities and the 13 East Timorese are still lingering in prison.

4.6 The Government of Indonesia was also called upon to ensure that all the East Timorese in custody, including main public figures, are treated humanely and with their rights fully respected, that all trials be fair, just and public, and that the right to proper legal representation, in accordance with international humanitarian law, be recognized. In mentioning "main public figures" it seems clear that the resolution had in mind the East Timorese resistance leader, Xanana Gusmão, who had been captured in Dili on 20 November 1992 and whose trial was then taking place in the territory's capital before an Indonesian court of law.

After his arrest, Mr. Gusmão was kept incommunicado during 17 days, after which he was allowed to be visited once by the International Committee of the Red Cross. Against all principles of international humanitarian law, he was exhibited a number of times in televised "conversations" and "interviews", carefully watched and censored, in which he reneged on his long-standing convictions and expressed "repentance", appealing to his companions in East Timor to surrender. Indonesia proclaimed that he would be brought to public trial, under Indonesian law, indicating its willingness to allow foreign journalists, international observers and diplomats to attend.

Apart from the basic illegitimacy stemming from the fact that Indonesia is illegally occupying East Timor, in defiance of the Charter of the United Nations and the relevant resolutions of the General

Assembly and the Security Council, the trial of Xanana Gusmão (which started on 1 February and dragged on until 23 May 1993) did not conform to the norms of international humanitarian law nor, ironically, to the Indonesian Code of Penal Procedure itself. It offered no guarantees whatsoever of impartiality and objectivity. Where was the assistance of a lawyer while he was under interrogation? Where was the freedom to choose his legal counsel? And where were the defence witnesses, not to mention that those of the prosecution who testified were detained people or at the mercy of the Indonesian authorities. And what about the denial of the permission to Mr. Gusmão to read his own defence plea in contravention of Indonesian law? The translations provided by the court were poor and inaccurate, hindering the defendant's participation in the procedure and the hearing of certain witnesses.

The sentence handed down on Xanana Gusmão - life imprisonment - was striking in its iniquity and inhumanity. Mr. Gusmão was found guilty on charges of "rebellion" and "separatism" for opposing Indonesia's rule in East Timor, a rule which is not internationally recognized.

According to Amnesty International, hundreds of East Timorese were detained and held incommunicado in the weeks before the anniversary of the 12 November killing and the arrest of Xanana Gusmão. Some of them were reportedly tortured. Antonio Gomes de Costa (alias Ma'Huno), another leader of the East Timorese resistance, captured in early April, has remained practically incommunicado and nothing has been revealed with regard to his possible trial.

After Mr. Amos Wako, the United Nations Secretary-General's personal envoy, visited East Timor last April, a number of detainees, whom he had met at his request, were transferred to West Timor.

4.7 The Commission on Human Rights welcomed the greater access to the territory that had been granted recently by the Indonesian authorities to human rights and humanitarian organizations and called upon them to expand this access further.

In fact, greater access had been announced and provided, as pointed out earlier, at the beginning of Mr. Gusmão's trial. It enabled representatives of Asia Watch and of the International Commission of Jurists to attend some sessions of the proceedings. Several Portuguese journalists also attended several sessions at the outset. But it is curious to note how the access was facilitated at the beginning of the trial and how it was obstructed in its final phase, when Xanana Gusmão had given clear signals that he was going to denounce the political manipulation of the entire trial and recant his initial declarations of repentance which he considered he had been forced to make. Immediately, then, difficulties were raised which prevented, in particular, the representative of the United Nations, Mr. Tamrat Samuel, from attending two sessions of the trial and foreign diplomats from listening to the proceedings that were taking place in the courtroom.

Access to East Timor remained in fact restricted (Indonesia continues, for instance, to reject access to the territory by Amnesty International), making almost impossible the effective monitoring of human rights. Access to foreign journalists was tightly circumscribed (A/AC.109/11154, para. 52). Delegations from the European Parliament, the United States Congress and the Australian Parliament were refused authorization to visit East Timor.

More ominously, the International Committee of the Red Cross (which had been unable to conduct confidential prison visits in East Timor during 1992, according to the same document) was recently forced to be made public (in May and in June 1993) that the limitations to which its action had been submitted in East Timor were preventing the ICRC from carrying out its visits to political prisoners in the territory.

4.8 The Government of Indonesia was urged by the Commission on Human Rights to invite the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or abitrary executions, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to visit East Timor and to facilitate the discharge of their mandates. So far no invitation has been addressed to them by Indonesia.

A visit by Mr. S. Amos Wako, personal envoy of the United Nations Secretary-General, had been previously agreed upon and took place in April 1993. Mr. Wako was able to meet with some East Timorese, including Mr. Xanana Gusmão and other prisoners. General Syafei said later that he suspected Mr. Wako to be responsible for the unexpected about-face of Mr. Gusmão regarding his political stance at the trial. This accusation was publicly rejected by the Secretary-General's spokesman. Mr. Wako's report has not yet been rendered public.

4.9 The Sub-Commission will take up the question of East Timor at a special and delicate moment. Indonesia has not made, as it has been clearly demonstrated, credible signs of complying with the requests of both the Commission on Human Rights and the Sub-Commission, and the overall human rights situation in East Timor has failed to improve.

As has been the case in the last years, we believe that the Sub-Commission, in the light of its responsibilities in this field, should assess the human rights situation prevailing in East Timor and take action, as appropriate, to uphold the human rights and fundamental freedoms of the people of East Timor and to underline the need for Indonesia to abide by the relevant resolutions of the Commission on Human Rights and of the Sub-Commission itself."

Annex III

Material provided by non-governmental sources

During the period covered by the present report (March 1993 to January 1994) the three main non-governmental sources of information on the situation in East Timor were Asia Watch, the International Commission of Jurists and Amnesty International. Material received from Amnesty International was partly summarized and described in the note by the Secretariat on the situation in East Timor, presented to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-fifth session (E/CN.4/Sub.2/1993/14, paras. 13-14)

A. Information provided by Asia Watch

In April 1993 Asia Watch published an issue of its publication Asia Watch largely dedicated to the trial in Dili, East Timor, of the East Timorese resistance leader Xanana Gusmao ("Remembering History in East Timor: The Trial of Xanana Gusmao and a Follow-up to the Dili Massacre", vol. 5, No. 8). The organization sent an observer to the trial and the latter was present at one session of the trial, during which an examination of a witness for the prosecution took place. The observer also interviewed judges, prosecutors and defence attorneys, as well as domestic and international observers who had attended previous sessions of the trial. Based principally on information gathered during the above-mentioned attendance and interviews, the observer reached findings regarding the circumstances of Xanana's arrest and detention, the reason why he was not charged with subversion, the access to and the adequacy of his legal defence, the role of the interrogation depositions, the significance of detained witnesses for the prosecution, and the pace and openness of the trial.

The following are excerpts from the Asia Watch observer's findings:

"Circumstances of arrest and detention

... All judges and attorneys for the prosecution and defence in the Xanana trial interviewed by the Asia Watch observer denied any knowledge that family members of the defendant were being detained.

During the course of the trial, Xanana has confirmed the testimony of prosecution witnesses regarding his leadership of the independence movement and participation in attacks on ABRI, stating that he accepts responsibility for the actions of his men. Xanana's apparent 'change of heart' about independence for East Timor, and his behaviour in court, accepting everything that every prosecution witness said without comment, prompted much speculation among domestic and international observers. many feared that the statements made on the videotape were coerced, and that at minimum, Xanana was subjected to extreme psychological pressure, especially as many family members were in military custody. The Asia Watch observer spoke to several people, including both government and non-governmental representatives, who had had direct access to Xanana or had observed him in court; none provided any evidence to support allegations of physical torture. Nevertheless, in view of the fact that he was held incommunicado during the first 17 days following his arrest, the allegations cannot be ruled out until Xanana is in a position to speak freely.

Why not subversion?

The fact that Xanana was charged under the rebellion and secession provisions of the Criminal Code rather than the anti-subversion law more commonly used against political detainees is being interpreted by some observers as a positive development. It shows, they say, that the Indonesian Government is increasingly sensitive to domestic and international criticism of the anti-subversion law as too broadly worded, too indiscriminately applied, and too lacking in basic safeguards against abuse of those detained under it. (Suspected subversives are usually held in military, rather than police custody before trial and there are no set limits on pre-trial detention, for example.) ...

... A senior official of the prosecutor's office in Dili dismissed the 'open' versus 'underground' explanation for the lack of subversion charges against Xanana, and explained that the choice was purely a question of available evidence. Subversion charges, he explained, are used when prosecutors do not have sufficient evidence to meet the stricter requirements of criminal law, or when it is necessary to detain a suspect when authorities need time to determine his or her position in a clandestine organization. In Xanana's case, since there was sufficient evidence to bring charges without relying on the broad and vague provisions of the subversion law, it was deemed unnecessary. The fact that a prosecutor admitted the standards of evidence are low in subversion cases should be additional reason to dispense with it in the interests of justice.

Access to and adequacy of legal defence

Four days after Xanana's arrest, the Indonesian Legal Aid Institute (Yayasan Lembaga Bantuan Hukum Indonesia or YLBHI) sent a letter to General Try Sutrisno, then Commander of the Indonesian Armed Forces, now Vice President of Indonesia, that called on the military to respect the provisions of the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana or KUHAP) during Xanana's interrogation. In particular, the letter stressed, the suspect should be entitled to counsel of his own choosing. YLBHI subsequently received oral, and later written, power of attorney from members of Xanana's family in Australia to represent him. According to YLBHI attorneys, in such circumstances police officials are required by law to allow prospective legal counsel access to the detainee. The Criminal Procedure Code provides for the right to contact counsel and the right to be provided counsel when the charge carries a penalty of at least 15 years or death.

YLBHI requested permission from the officials at police headquarters in Jakarta on 17 December 1992 to meet with their prospective client, but were refused by Police Colonel Ahwil Lutan (head of police intelligence, Kasubdit Reserse Polri) on the grounds that Xanana had already chosen a lawyer. Denied direct access to Xanana, YLBHI attorneys sent a letter to Xanana dated 18 December in care of police officials. Two weeks later, Colonel Ahwil produced a three-sentence handwritten letter purportedly from Xanana dated 30 December, thanking YLBHI for their offer of assistance, but stating that he would not be needing their services, with no further explanation. The police also provided a translation of the letter into Indonesian. Government officials claim that Xanana himself decided that he did not want YLBHI's services, and that by respecting his wishes not to meet with YLBHI, officials were honouring his 'rights'.

In the meantime, Colonel Ahwil had allowed his friend Sudjono, a prominent Jakarta attorney, to meet with Xanana in mid-December. According to Sudjono, Xanana had previously stated that he did not need legal representation until the trial itself, but that Sudjono was able to win his confidence over the course of four meetings in December and January. On 26 January 1993 Sudjono was officially appointed to represent Xanana.

Sudjono's appointment to defend Xanana provoked controversy in the Indonesian legal community. In interviews, Sudjono stresses his leadership role in and support from the Indonesian Bar Association (IKADIN), yet several leaders of IKADIN privately expressed grave doubts about the circumstances and ethics of his selection. Sudjono's friendly relations with the police and prosecutors, his secretiveness during the period following his first meeting with the defendant in mid-December through the announcement of his selection at the end of January, and his failure to cooperate with YLBHI were all cited as cause for concern.

An interview Sudjono gave to a Jakarta magazine was revealing in its details on how he was given the case. Colonel Ahwil had been Sudjono's student at Pancasila University in Jakarta and they were close friends. When Sudjono saw Colonel Ahwil on television, accompanying the ICRC to see Xanana, he rang him up, and Colonel Ahwil said, 'How would you like to handle the Xanana case?' Sudjono said it would be difficult, but Ahwil pressed him. Sudjono wavered, but he ran into a prosecutor who also urged him to take the case, and then Colonel Ahwil rang him again. He finally agreed to take it. (This was all presumably done without consultation with Xanana.) When the interviewer said, 'You're known as a lawyer famous for being close to the police and bureaucracy,' Sudjono responded, 'What's wrong with that? Why should they be my enemy? Hey, that's how I make my living.' Sudjono later said the magazine article was factually correct but he was unhappy with the way he was portrayed.

In an interview with the Asia Watch observer, Sudjono admitted that he had not inquired into the circumstances of Xanana's arrest and initial detention, even though the questioning resulting in the defendant's interrogation deposition (Berita Acara Pemeriksaan or BAP) was substantially complete by the time of their first meeting. He stated that he did not feel that his and Xanana's lack of a common language was a significant barrier to communication, suggesting that Xanana's ability to speak and understand Indonesian was improving. When asked by a journalist whether there were any cultural obstacles in handling the case, since Xanana only spoke Portuguese, Sudjono said, 'I'm used to dealing with foreigners. I once took on the case of a Canadian slapped with a heroin charge.'

As of the date of his interview with the Asia Watch observer (12 March, six weeks after the start of the trial), Sudjono admitted not yet having discussed strategy with his client. As part of an explanation why he was unwilling to share copies of the interrogation depositions, Sudjono mentioned that he was planning to write a book on the trial, providing support for the contention that publicity was his primary motivation in taking on the Xanana defence.

In any Indonesian trial, the first chance that the defence has to object to the charges brought against the accused is immediately after the indictment is presented by the prosecution, when the defence can present a demurrer called an eksepsi. In political cases, the eksepsi is used to raise any issues about violations of the Criminal Procedure Code in the accused's arrest and detention, any problems with the jurisdiction of the court or the application of specific laws under which the accused is charged.

The eksepsi prepared by Sudjono is an odd document. It ignores completely, for example, the violations of the Criminal Procedure Code involved in Xanana's arrest and that neither family nor counsel was allowed access to him for more than two weeks after his arrest. The main argument raised in the document is that because certain groups in East Timor never relinquished their desire for independence, they never acknowledged the legitimacy of Indonesian courts. The argument is not couched in terms of Indonesian courts not having jurisdiction over East Timor in any objective sense, and no international laws or United Nations General Assembly resolutions on self-determination are cited. Rather, Sudjono stresses that because Xanana's own organization never perceived Indonesian courts as legitimate on East Timorese soil, therefore the organization does not consider the courts to have jurisdiction.

One of the elements of a fair trial is the adequacy of time for preparation of the defence. Sudjono's eksepsi is a short document, 9 pages compared with the 36-page eksepsi that the lawyers of Fernando de Araujo prepared. Length is not necessarily a virtue, particularly in legal documents, but in this case, the eksepsi appears perfunctory. The court, however, was not at fault. In the interview in the magazine Jakarta, Jakarta, cited above, Sudjono boasts that on the first day of court, the judges gave him a week to prepare the eksepsi and he countered with five days. Eventually they agreed on three, but Sudjono said it was no problem, as he had mastered the issues, and anyway, the eksepsi was not particularly important.

Sudjono's closeness to the police and the lack of effort apparent in the eksepsi raise concerns about whether in fact he would have been Xanana's counsel of choice had Xanana been free to choose. In spite of these concerns, many observers, including most government officials and some members of the diplomatic community, praised Sudjono's defence of Xanana. Sudjono and his supporters suggest that his motivation springs from a commitment to the law (rather than any political motivation), and stress his willingness to foot the considerable bill for the defence out of his own pocket. Sudjono has also brought reputable legal scholars - Dr. Loeby Loekman of the University of Indonesia in Jakarta and Prof. J.E. Sahetapy of Airlangga University in Surabaya - onto his defence team.

He has also raised serious issues in the course of his defence. He publicly complained of the difficulty of identifying defence witnesses willing to testify, implying that they fear for their safety. In an interview with the Asia Watch observer, he explained that several potential witnesses that he had identified declined, asking 'siapa jamin saya?' ('who will guarantee [my safety]?'). The new Governor of East Timor, Abilio Jose Osorio, publicly declined to serve as a defence witness, and stated that he would not allow other provincial government officials to testify. The lack of security for defence witnesses, and the governor's unilateral prohibition are clearly fair trial issues, and a commentary on the status of civil society in East Timor. ...

The role of the interrogation depositions

The interrogation deposition or berita acara pemeriksaan (BAP) is the trial document that contains the sworn depositions of the defendant and witnesses obtained by the police during interrogation. In the trial of Xanana and more generally in trials in Indonesia, the BAP serves as a reference for judges and attorneys for the defence and prosecution in their examination of witnesses. In the Indonesian justice system, judges participate in the examination of witnesses, and lead off the questioning. During the session of the Xanana trial attended by the Asia Watch observer, judges prompted and corrected the witness regarding dates and times of events recorded in the BAP. One judge stated in an interview that it would be 'impossible' for a witness to contradict the BAP in court, since both testimonies are taken under oath. Nevertheless, if lawyers are not present during the interrogation recorded in the BAP or if the witness is being held incommunicado, there is always the possibility that the witnesses will tell their interrogators what they want to hear out of fear of the consequences if they do not.

Heavy reliance on the interrogation depositions is significant since many of the witnesses in the Xanana trial are themselves detainees (discussed below), and did not have access to legal counsel at the time of their interrogation. One witness for the prosecution, Mariano Da Silva, reportedly became very confused under questioning in court related to statements he had made in the BAP. It became apparent that the witness was illiterate, and was not sufficiently fluent in the Indonesian language to understand the BAP sworn statement that he had signed following his interrogation.

At the trial session previous to the one attended by the Asia Watch observer, Saturnino da Costa Belo, convicted and sentenced to nine years' imprisonment in connection with the Santa Cruz demonstration, was brought out as a witness for the prosecution. He entered the courtroom, greeted Xanana, shouted '*Viva Timor Leste!*', and was hastily removed from the courtroom. At the next session of the trial, the prosecution produced a letter from a police doctor stating that Saturnino was unfit to appear in court due to 'mental instability'. In lieu of his testimony, the prosecution read into the record excerpts from his deposition recorded in the BAP. At the motion of the defence, the entire statement was deemed to have been read into the record. In subsequent interviews, judges stated that this testimony would be given equal weight to that provided by witnesses in the courtroom. This is in accordance with the Criminal Procedure Code, which states that such sworn testimony 'shall be considered equal in value to the testimony spoken by a witness under oath at a trial' even though the defence is precluded from examining such witnesses.

The role of translation is another feature of the Xanana trial. Two court-appointed translators have served alternately during the trial, translating between Indonesian language and Portuguese or Tetum, the local Timorese language. Judges encouraged witnesses to speak in Indonesian as much as possible. During the session attended by the Asia Watch observer, the translator was used for communication between the chief judge and the defendant, but other court proceedings were not routinely translated. The defendant had to request that the excerpts from Saturnino's testimony read into the record be repeated and translated; the testimony of the session's one witness, Akuiliong, was not translated. Portuguese speakers who have attended other sessions of the trial have noted inaccuracies in the translation, including a rendering of '*a principio*' (in the beginning) as '*secara princip*' (as a principle).

Significance of Detained Witnesses for the Prosecution

The fact that several of the prosecution witnesses in the Xanana trial are themselves detainees raises concern for their safety and fair trial issues, both for this particular case and for the Indonesian justice system generally. Of the 30 names provided by ABRI of persons in military custody in Dili, three have appeared as witnesses in the Xanana trial. A fourth was scheduled for the 11 March session, but did not appear. Several others are reported by other sources to be detained. Since these detainees are in military custody and have not been charged with any crime, officials contend that they are not entitled to legal counsel. However, it is likely that these detained witnesses will eventually be charged with offences related to the substance of their testimony in the Xanana trial. (Asia Watch was told, for example, that a prosecution witness named Oscar Lima, a businessman suspected of assisting Fretilin who was arrested in Jakarta on 27 November 1992, would be brought to trial.) An important weakness in Criminal Procedure Code is that it fails to protect witnesses from self-incrimination through testimony that they are compelled to give in the trials of others.

Indeed, since the Criminal Procedure Code does not recognize the right of the military to arrest or detain civilians, persons in military custody are easily denied its procedural protections that do exist. In the words of a defence attorney, 'kalau di luar polisi, ngak ada hukumnya' ('If [the detention] is outside of the police, there is no law').

Some of the detained witnesses were visited once by the ICRC in December 1992 or January 1993. Oscar Lima, the businessman mentioned above, has never been visited. Indonesian officials gave various explanations for restrictions on ICRC access. The Minister of Foreign Affairs suggested that visits were restricted during the Muslim fasting month, which lasted from late February to late March in 1993. A senior military official suggested that the ICRC was being punished for violating the terms of its agreement with the Indonesian Government, but did not offer any evidence to substantiate the charge. Other military officials stated that the ICRC would not be allowed to visit these detainees while the trial was ongoing, although there is no known basis for such a restriction in law or policy. Indeed, while the trial is under way is precisely the time when access is most critical, given the detainees' vulnerability to pressure attempting to influence courtroom testimony.

While many of the detained witnesses were arrested in late 1992 around the time of Xanana's arrest, one witness, Jose da Costa (Mau Hudu, an assistant to Xanana), has been in custody since 23 January 1992. Observers who attended the 22 February 1993 session of trial at which he testified described the witness as appearing weak and fragile. Although he bore no visible signs of mistreatment, his appearance was contrasted to the more robust demeanour of Xanana.

The Asia Watch observer questioned judges and prosecutors in the Xanana case regarding the status of testimony of detained witnesses. Might their testimony be affected by the fact that they are in custody and potentially subject to coercion, and/or the fact that they themselves are likely to be subsequently charged and brought to trial on charges related to their testimony in the current case? Incredibly, the judges and prosecutors involved in the Xanana trial denied knowledge of the witnesses' status as detainees. Further, they stated that it was not their responsibility to know whether or not witnesses were detainees, and that detainee status would not influence the weight given to their testimony. Judges went on to say that even if they were to suspect that a witness was in detention and perhaps subject to mistreatment, it would be inappropriate for a judge to take the initiative to investigate unless a specific complaint were lodged by the detainee, legal counsel, or a family member. Two judges reported that while allegations of torture in custody had been raised by defendants on several occasions during their careers, the defendant had always withdrawn the charges when faced with the accused official. Their conclusion was that the allegations were thus demonstrated to be false.

Concerns have also arisen regarding the vulnerability to coercion of witnesses who are serving sentences resulting from prior convictions. Following the brief court appearance of Saturnino da Costa Belo, the witness who shouted out 'Viva Timor Leste!' on 4 March, it was reported that access to him and other convicted prisoners, including Gregorio Da Cunha Saldanha and Francisco Miranda Branco, had been restricted. Gregorio and Francisco were convicted of subversion in earlier trials stemming from the Santa Cruz demonstration, and had been included on the prosecution's list of prospective witnesses in the Xanana trial. As to the visit of the Asia Watch observer, they had not yet testified, but were expected to appear on 18 March. As of mid-April, they had yet to appear.

Openness of the Trial

The Xanana trial has been open to international observers from Asia Watch, the International Commission of Jurists, and members of the diplomatic community. Representatives of the domestic and international press, including journalists from Portugal, have also been allowed to attend the trial, and a journalist from the Australian Broadcasting Company was even allowed to film proceedings in the courtroom. It is thus the most closely monitored trial of any Indonesian political trial in recent memory. If the Indonesian Government's decision to open its legal system to close scrutiny of this kind is a precedent, it is unquestionably a welcome one.

Access provided to international observers and the press has not been unrestricted, however. A request from Amnesty International to send an observer to Dili to observe the trial was denied. The Asia Watch observer's time in Dili was limited to six days (rather than the ten days requested), thus limiting attendance at the trial to only one court session. Outside of the courtroom, the Asia Watch observer was under surveillance by military intelligence, and was accompanied at all times by a representative of the Indonesian Ministry of Foreign Affairs. Indonesian journalists are limited to one per news organization, and have to present their credentials one day in advance. The trial has received extensive coverage in the new local newspaper in Dili, Suara Timor Timor (STT). An observer reported that journalists leaving the courtroom on 4 March were warned not to cover the incident of the witness shouting 'Viva Timor Leste'; an article in the next day's STT mentioned a 'small incident' in which the witness yelled out, but did not report what was said.

Access to court documents is a critical factor influencing the quality of trial observation. Copies of the indictment (surat dakwaan), demurrer (eksepsi), and the prosecution's response to the demurrer were

> easily obtainable from the diplomatic community in Jakarta. The indictment had also been serialized in Suara Timor Timor in early February. No officials of the court were willing to provide a copy of the Berita Acara Pemeriksaan (BAP) to the Asia Watch observer, although judges and prosecution officials suggested that Xanana's defence lawyer could provide access to the document. As mentioned above, Sudjono declined to provide a copy of the BAP to the Asia Watch observer.
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> The Xanana trial has not been open to the general public. Persons wishing to attend court sessions must pass through two checkpoints at which their names are compared against a prepared list. On 10 March, at least two Indonesian citizens whose names were not on the list were turned away, even though there was room in the courtroom. Knowledgeable observers indicated that other than members of Xanana's family, diplomats, international observers, and the press, the courtroom was filled with government officials, military intelligence officers in plainclothes, and informers.
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> Security in and around the courtroom was heavy, but not heavy-handed. Some 50 uniformed policemen guarded the exterior and interior of the courtroom, while plainclothes officers, some wearing sophisticated communications equipment, assisted in processing prospective observers. Persons attending the trial had to exchange their identification cards for a pass, be frisked, and sit in assigned seats. One observer indicated that a local taxi driver was sufficiently intimidated so as not to want to drive near the courthouse."

B. Information provided by the International Commission of Jurists

Following the trial in Dili, East Timor, of the East Timorese resistance leader Xanana Gusmao, the International Commission of Jurists published a report by Mr. Fredun De Vitre, an advocate of the High Court in Bombay, India, who stayed in Dili from 28 February to 5 March 1993, and attended the trial on 4 March 1993 as an observer on behalf of the International Commission of Jurists. The International Commission of Jurists observer met and interviewed, among others, lawyers, the chief judge and members of Mr. Gusmao's family, but was not permitted to meet the accused or the prosecutors. His conclusions were the following:

> "Xanana's trial has ended with the conviction of the accused and imposition of a life sentence against him. His conviction appeared to be a foregone conclusion in all quarters in Jakarta and Dili much before the actual Court Judgement. So also, there was near unanimity that Xanana would not be given the death sentence. The final verdict has proved the accuracy of these pre-judgement expectations.
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> The ICJ Observer found no evidence of physical torture of the accused. However, in several respects, the trial process violated the accused's rights and was not in conformity with international standards of fair trial procedure and even breached the safeguards provided by the Indonesian Code of Criminal Procedure (KUHAP).

The initial infractions of Xanana's rights related to the days immediately after his arrest, when no lawyer was allowed to be present during his interrogation. This was in clear breach of international standards and of KUHAP. The story put out by the Indonesian authorities, that Xanana had himself refused to have lawyers present during his interrogation, is incredible and lacks conviction.

The appointment of the defence advocate was another area of concern. Although the person finally appointed was a senior, experienced criminal lawyer, his admittedly close links with top military officers was disquieting. Doubts remained throughout that Xanana had not voluntarily appointed him.

Although access to Dili and to the courtroom for many international observers was free, the reluctance to permit them access to court documents, to the accused and to prosecution counsel was disheartening.

The non-invoking of the Anti-Subversion Law against Xanana was an encouraging feature of the trial.

One of the most significant violations of the accused's rights was the court's refusal to permit Xanana to read his defence statement. The ICJ has obtained translated excerpts from the 28-page defence statement that was presented in court on 17 May 1993 by Xanana. After reading the first two pages the court ordered him to stop. This violated his rights under KUHAP and was not in accordance with internationally accepted fair trial procedures.

Many of the witnesses who deposed for the prosecution at Xanana's trial are themselves under detention, either after conviction or awaiting trial. In either case, doubts remain that their testimony was not entirely voluntary. Those still awaiting their own trial are under a great handicap, as their statements in Xanana's trial can be used against them in their own trials. Oscar Lima, a businessman, faced this dilemma.

Governor Abilio was reported to have stated that Xanana had committed murders and crimes and must consider himself lucky that he was being tried in Indonesia, a State that believed in the rule of law. The Attorney-General was reported to have stated just a few days before the verdict, that the Court was not bound to award only a life sentence to Xanana as sought by the prosecution and could award the sentence of death also. Such statements in the midst of a trial can legitimately be viewed as attempts to interfere with the trial process and must be avoided."

C. Information provided by Amnesty International

In addition to the material received from Amnesty International and included in Sub-Commission document E/CN.4/Sub.2/1993/14 (paras 13-14), the organization also provided the text of a statement made by its representative on 13 July 1993 to the United Nations Special Committee on Decolonization. The principal allegations made were the following:

- Since Amnesty International had last addressed the United Nation Special Committee on Decolonization in August 1992 there had been no fundamental change in the Indonesian Government's repressive posture towards suspected pro-independence supporters in East Timor. The military authorities allegedly continued to employ any means, including extrajudicial execution, disappearances, arbitrary detention and torture, in the name of maintaining security and destroying pro-independence groups.

- There has been a persistent failure to investigate human rights abuses and bring the perpetrators to justice.

- The vast majority of people arrested in East Timor were held in arbitrary, unacknowledged detention, frequently incommunicado. The period of detention ranged from a few hours to several months. Most detainees were allegedly subjected to physical and psychological abuse before being released without being charged. Since July 1992 over 400 people had allegedly been detained in East Timor either because of their alleged links to pro-independence groups, or because they were relatives of individuals suspected of having such links.

- Torture of detainees was allegedly widespread; it was used against suspected political opponents, including women, and against their relatives and in some cases it allegedly resulted in hospitalization or even death.

- There were reports of people being arrested and subsequently banished to various regions of East Timor.

- There were reports of dozens of new "disappearances" in East Timor since the Santa Cruz cemetery killings in Dili in November 1991. There were also reports of at least 45 extrajudicial executions in the 18 months since November 1991. The reports, although difficult to confirm, suggested, according to Amnesty International, that unlawful killing by Indonesian forces persisted in East Timor.
